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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.23 OF 2006

The Commissioner of Income Tax .
City-VIII, Bombay. ...Appellant
V/s.
Photophone Ltd., Mumbai ...Respondent

Mr.Suraj M. Shah i/b. Mr.H.D. Rathod for the Appellant.

Mr.Percy Pardiwala with Ms.Aarti Jumani i/b. M/s.Rustomji & Ginwala for the Respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR,JJ.

DATE : 27TH AUGUST, 2007.

P.C. :

1. The Appellant has approached this Court being aggrieved by the order of the Tribunal dated 31.05.2001 by way of present Appeal. The reference is sought in respect of the following questions :-

> "1. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal erred in law in holding that the Goa Unit of the assessee company was a small scale industrial undertaking within the meaning of Section 32A of the I.T. Act and was thus eligible for Investment Allowance even though the items manufactured by the unit are specified in Schedule Eleven of the I.T. Act,

1961.

2. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal erred in law in holding that the payment of bonus by the assessed was in accordance with the provisions of Payment of Bonus Act and not in excess of the said provisions as held by the Assessing Officer.

3. Whether on the facts and in the circumstances of the case, the Hon. Tribunal erred in law in holding that the expenditure incurred on the repairs of motor cars should not be included for working out the disallowance u/s.37(3A) of the I.T. Act?"

2. In so far as the first question is concerned, the Tribunal had proceeded on the footing that the Respondent has earlier been held to be a small scale industrial undertaking. The Tribunal noted that those articles manufactured are in the 11th schedule, however, held that the aggregate value of plant and machinary on the first day of the accounting year did not exceed the sum of Rs.20 lakhs which was the prescribed minimum. In answer, it is sought to be contended that this finding is not correct as the record would show that the investment of the

Respondent's plant and machinary is over Rs.20 lakhs. If that be the case, that would be a finding of fact and it is open to the Appellant to apply for rectification of the order where the Respondent has been held to be a small scale industry, if in law now permissible. On behalf of the Respondents, it is contended that though the Balance Sheet in respect of all the three Units including the Bombay Unit is one, both the Goa Units are concerned, are small scale Units. One Unit was set up to manufacture of projectors and a second unit was set up in Goa in 1983 for manufacture of cameras.

3. In so far as Question No.2 is concerned, the Tribunal proceeded on the basis that the assessee was bound to comply with the provisions of the Payment of Bonus Act and on failure to do so would suffer penal consequences. In answer, on behalf of Revenue, reliance have been placed in the judgment of the Karnataka High Court in Widia (India) Ltd. v/s. Chief Commissioner of Income Tax (Admn.) & Anr. reported in 233 ITR. On perusal of the facts therein, it would be clear that the Karnataka High Court proceeded on the footing that though there was surplus, the same had not been distributed. In so far as facts of the present case are concerned, there is recorded a finding of fact that the bonus has been paid. Once that be the case, the question of law as framed would not arise.

4. In so far as last question is concerned, the Tribunal has relied on various judgments including the judgment of this Court in the case of CIT v/s. Chave Bright Steel Ltd. (No.1) 177 ITR 124. No illegality is pointed out in respect of the conclusions.

5. In our opinion, for the above reasons the Appeal stands dismissed.

[J.P. DEVADHAR, J.] **[F.I. REBELLO, J.]**